

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1352 of 1997
&
CIVIL REVISION APPLICATION No. 1354 of 1997
with
CIVIL APPLICATION No. 1579 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JANKI JITENDRA MODI

Versus

MADHUKANTA RAMNIKLAL SHAH TRUST THRO'TRUSTEE

Appearance:

1. Civil Revision Applications Nos. 1352/1997 & 1354/1997
MR MIHIR H JOSHI for Petitioners
MR PRANAV G DESAI for Respondents
 2. Civil Application No. 1579 of 1999
MR MIHIR H JOSHI for Petitioners
MR TUSHAR MEHTA for Respondents
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CORAM : MISS JUSTICE R.M.DOSHIT

ORAL JUDGEMENT

Heard the learned advocates.

Civil Application No. 1579 of 1999 is allowed in terms of paragraph 4 (B). The cause title of the Revision Application be accordingly amended.

These two Revision Applications arise from an effort of the plaintiff no. 2 in Civil Suit No. 184 of 1992 pending before the Civil Judge [SD], Bhavnagar to sue in her personal capacity. It appears that at the time when the suit was instituted, the plaintiff no. 2 was a minor. She was represented by her next friend and guardian, the mother. On her attaining the majority in the year 1996, her next friend - the mother, filed Application Exh. 96 for allowing the plaintiff no. 2 to sue personally. The same was rejected by the learned trial Judge under the impugned order dated 29th March, 1996. The reason which weighed with the learned Judge was that the plaintiff no. 2 could not have been represented through her mother so long as her father was alive. The mother ought to have sought permission of the Court before suing as the next friend and the guardian of the minor. Feeling aggrieved, the plaintiff no. 2 has preferred above Civil Revision Application No. 1354 of 1997.

The plaintiff no. 2 also made application Exh. 127 for permission to sue on her behalf which too was rejected by the learned Judge on 16th September, 1997. Feeling aggrieved, the plaintiff no. 2 has preferred the above Civil Revision Application No. 1352 of 1997.

On the facts and in the circumstances of the case, Civil Revision Application No. 1352 of 1997 is allowed. The impugned order dated 16th September, 1997 made below Application Exh. 127 is quashed and set-aside. The Application Exh. 127 stands allowed. The cause title of the Suit be accordingly amended. Interim relief stands vacated. Rule is made absolute. There shall be no order as to costs.

In view of the above order made on Civil Revision Application No. 1352 of 1997, Civil Revision Application No. 1354 of 1997 is disposed of. Rule is discharged with no order as to costs. Interim relief stands vacated.

[Miss R.M Doshit, J.]

Prakash*